Remarks

AMENDMENTS TO THE CLAIMS

Claims 30, 32 – 37, 46-53 and 55-61 have been amended to claim a plastic pallet (for antecedent basis, please see, for example, page 6, line 25).

Claim 30 also has been amended to state that all resins are free of halogen, in accordance with the specification on page 3, line 15. Claim 30 has also been amended to clarify its meaning in accordance with the Examiner's request so that there can be no uncertainty as to the requirement that all of the flame retardants in the plastic pallet are non-halogenated flame retardants. In claim 30, antecedent basis for "plastic pallet composition" is now provided.

Claims 31and 54 have been cancelled.

Claim 32 has been amended to clarify its meaning.

Claim 34 has been amended to include glass fibers as a filler, in accordance with the disclosure, for example, on page 13, line 11.

Claims 48, 49, 53, and 56 have been amended to clarify their meanings.

Examination and reconsideration of the application, as amended, are respectfully requested.

THE REJECTIONS

REPEATED REJECTIONS

PARAGRAPH 6

Claims 30-32 have been rejected under 35 USC 102(b) as being anticipated by Nagano et al.

Claim 30 relates to the plastic pallet of the invention that comprises a combination of halogen-free polyolefin and thermosetting resins as well as nonhalogenated flame retardant(s). The claimed invention can contain no halogenated resin and no halogenated flame retardant. Claim 31 has been cancelled. Claim 32 is drawn to various examples of epoxy resins useful as the thermoset resins of the invention.

Nagano et al. relates to a fireproof polyolefin pallet, which is made of material containing polyolefin and halogenized epoxy resin. Halogenized epoxy resin is a fire proofing agent. Other fire proofing agents can be present. No other thermosetting resins are present.

Applicant's previous remarks in previous Responses are incorporated here by reference. Applicant has amended independent claim 30 to exclude halogen from the polyolefin and thermosetting resins. The language of the claim has further been clarified to exclude halogenated flame retardants from the plastic pallet composition.

In contrast, all working examples of Nagano et al. require halogenized epoxy and the products have good impact strength. However, halogenated epoxy falls outside the claims of the present claim 30. The comparison Example of Nagano et al. discloses a fireproof pallet that contains no halogenated epoxy. This comparison pallet that has inferior properties also falls outside the present invention claims because it contains no thermoset resin. This is a teaching away from producing the Nagano et al. pallet without including halogenated epoxy .

Applicant has achieved a desirable plastic pallet (no halogenated epoxy) despite the teachings of Nagano et al.

It is submitted there can be no anticipation of the present invention by Nagano et al. and this rejection should be withdrawn.

PARAGRAPH 7

Claim 34 has been rejected under 35 U.S.C. 103(a) over Nagano et al. in view of Perez et al.

Claim 34 relates to the plastic pallet of the invention as described in claim 30 further comprising any of bubbles, glass beads, and glass fibers, as fillers.

Nagano et al. teach a polyolefin pallet and the pallet must include halogenized epoxy resin as a fire proof agent. No other thermoset is taught or suggested. As noted above, the present independent claim 30 can contain no halogenated resin nor can it contain halogenated flame retardant. Without halogenated epoxy, the Nagano et al. comparative example has shown the resulting pallet to have poor impact strength. This is a teaching away from producing a useful pallet without halogenated epoxy. Contrary to the teachings of Nagano et al. the present invention pallet has been shown to be successful.

Perez et al. discloses polymeric networks and various catalysts and curing agents as well as a foam composition. Perez et al. does not teach a pallet, nor does it teach use of a fire retardant in a non-halogenated resin composition. Inclusion of bubbles, glass beads, or glass fibers, which are disclosed in Perez et al., will not overcome the essential failure of Nagano et al. to teach or suggest the present invention fire retardant plastic pallet wherein the fire retardant and resins are free of halogen.

The prior art provides no motivation, i.e. showing of the desirability of making the modifications urged by the rejection. *In re Gordon,* 221 U.S.P.Q. 1125 (Fed. Cir. 1984O. Further, it is well accepted in the patent arts that the prior art must be viewed as a whole, it being improper to selectively choose elements or concepts from the various references, without considering the references as a whole, so as to arrive at the claimed invention by using the claims a guide* (* means see case law in Summary, below). There can be no obviousness.

It is submitted this rejection has been overcome and should be withdrawn.

PARAGRAPH 8

Claim 35 has rejected been rejected under 35 U.S.C. 103(a) over Nagano et al. in view of Ueeda et al.

Claim 35 relates to the plastic pallet of claim 30 further comprising an antimicrobial additive.

As noted above, the present invention independent claim 30 is not suggested or taught by Nagano et al. because the useful pallet of Nagano requires the presence of halogenized epoxy. Halogenized epoxy cannot be present in the plastic pallet composition of the present invention as defined by amended claim 30.

Ueeda et al. discloses a thermoplastic sheet that can be made into a pallet. No thermosets are taught or suggested. Ueeda discloses antimicrobial and antifouling compounds for inclusion in a thermoplastic sheet. There is no teaching, suggestion, or any motivation in the references to make the changes urged by the rejection.

Ueeda et al. does not overcome the essential failure of Nagano et al. to teach or suggest the present invention fire retardant plastic pallet (no halogenated resins or fire retardant) and there can be no obviousness.

Further, it is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, so as to arrive at the claimed invention by using the claims as a guide*. There can be no obviousness. It is submitted this rejection has been overcome and should be withdrawn.

PARAGRAPH 9

Claim 36 has been rejected under 35 U.S.C. 103(a) over Nagano et al. in view of Nakacho et al.

Claim 36 relates to the plastic pallet of the invention further comprising specified nonhalogenated flame retardants.

As noted above, the present invention independent claim 30 is not suggested or taught by Nagano et al. because the useful pallet of Nagano et al. requires the presence of halogenized epoxy. Halogenized epoxy is expressly excluded in claim 30 of the present invention. No other thermosetting resins are taught in the Nagano et al. compositions for a pallet.

Nakacho et al. relates to crosslinked phenoxyphosphazine flame retardants in thermoplastic or thermoset resins. No pallets are disclosed and no combinations of thermoplastic and thermoset resins are disclosed.

Nakacho et al. fails to overcome the failure of Nagano et al. to teach or suggest the present invention composition for a plastic pallet.

In contrast, the present invention discloses a plastic pallet having a combination of nonhalogenated thermoplastic and thermosetting resins as well as nonhalogenated flame retardants(s). There is no motivation in the references for making the changes urged by the reference.

Further, it is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, so as to arrive at the claimed invention by using the claims as a guide*. It is submitted there can be no obviousness and this rejection should be withdrawn.

PARAGRAPHS 10 AND 11

Claims 32, 48, 53, and 56 have been amended to clarify their meanings. It is submitted these objections have been overcome.

PARAGRAPH 12

Claims 30 and 49 have been amended to clarify their meanings. It is submitted these rejections have been overcome.

The rejection of claim 50 under 35 USC 112 has not been explained so no response has been made to this rejection.

PARAGRAPH 13

Claims 30, 32, 34-37, 47 and 49-61 have been rejected under 35 U.S.C. 102(b) as being anticipated by Oishi et al.

Oishi et al. relates to diguanamines and preparation process, derivatives and use thereof. There are three inventions disclosed in this patent (col. 1, lines 19 - 31):

1. Novel diguanamines can be used as derivatives, and, for example, in combination with a thermoset composition.
2. Diguanamines can be used with certain specified resin blends in combination with flame retardants as films, inks, waxes, microspheres, etc. (col. 49, lines 32-52 and col. 52, line 44 to col. 53, line 5). No pallets or containers are disclosed.
3. Thermosetting molding compositions comprising diguanamine can be used as a container (col. 69, line 3).

The Office Action fails to appreciate that these three inventions have different compositions and different uses. The rejection alleges the composition of Invention 2 has the use of Invention 3. It alleges the polymeric composition comprises a blend of polyolefin resin and a thermosetting resin (col. 29, lines 3-6 and 13-14) and can be used as a plastic container (col. 69, line 3). Applicant strenuously disagrees.

A close look at col. 29, lines 3-6 and 13-14 reveals a statement that resins to which the Oishi et al. Invention 2 relates to include synthetic resins and oil, for example, thermoplastic resins, thermosetting resins and rubbers as well as modified resins such as blends, block

copolymers, graft copolymers and rubber-modified polymers of such resins and/or rubbers. What are these "blends" referring to? Col. 29 is silent on this point. It is to be appreciated that silence in a reference is not a teaching. In the vast list of materials disclosed in this 65 page patent we find the answer. In col. 35, lines 6-11 the list of blends is given, and the list is repeated and amplified in col. 35, lines 34-46. No thermosets are disclosed in any of the blends. These Invention 2 thermoplastic blends are disclosed to have many uses, but they are not useful as pallets or even as containers.

A close look at col. 69, line 3 (containers), shows that Oishi et al. Invention 3 is useful only with thermosetting resins (col 56, line 32, col. 59, lines 16, 46, and col. 57, lines 22, 29, 36). This invention is not taught or suggested to be useful in any blends of thermoplastic and thermosetting resins. Invention 3 is not taught or suggested to be useful as a pallet.

A careful review of the Examples shows, for example, the following:

Examples 49, 61, 71, 72 – all thermoplastic blends

Examples 53-60, 70, 85-89 – all single resin polyolefin

Example 94 – epoxy, a single resin

No Examples show a blend of polyolefin and thermosetting resins..

Clearly. it is error for the Office Action to allege that Oishi teaches blends of thermoplastic and thermosetting resins (including diguanamines) as containers.

Applicant's thorough review of Oishi et al. fails to reveal deguanamine compounds included in a blend of polyolefin and thermosetting resins useful as a pallet. It is submitted this rejection of independent claim 30 is in error and should be withdrawn. Also, dependent claims 32, 43-37, 47, and 49-61 drawn to specific embodiments cannot be anticipated by Oishi et al. because of the essential failure of Oishi et al. to teach or suggest the basic resin of the present invention (combination of polyolefin and thermosetting resins), and these rejections likewise should be withdrawn.

PARAGRAPH 14

Claims 37, 47, 49-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagano et al.

Nagano et al. teaches a plastic pallet comprising polyolefin resin, a halogenated epoxy resin that is acknowledged to be a fire proofing agent, and optionally a non-halogenated fire proofing agent. In the words of Nanago et al., the invention is described in [0011] as follows: "This invention is regarding a fire proof polyolefin pallet made of polyolefin containing polyolefin, halogenized epoxy resin, and if necessary , other fire proofing agent, and talc." (emphasis added). In [0013], Nagano et al. says: "The halogenized epoxy resin used in this invention adds fire proofing to the polyolefin." In [0014], other fire proofing agents which can be used in this invention are named. These are in addition to the required halogenated epoxy as stated in [0011], as noted above. The requirement of halogenized epoxy, an acknowledged fire proofing agent as a component in the Nagano et al. composition, is clear. This is confirmed in Examples 1 and 2 of Nagano et al. where fire proof pallets having high impact resistance required the presence of halogenized epoxy. Comparative Example [0023] describes a fire proof pallet that contained no halogenated epoxy (but contains another fire proofing agent) and it was of inferior impact strength. This serves as a teaching away from using the Nagano et al. composition without halogenated epoxy. It has been shown in all of the Nagano et al. working Examples that with halogenated epoxy the composition produced a useful product with good impact strength. No other thermosetting resin is taught as useful in the Nagano et al. composition for pallet.

In contrast, the present invention claims 37, 47, and 49-53 (Claim 54 has been cancelled as being redundant in view of Claim 53) all depend from claim 30, as amended, which is drawn to a plastic pallet that cannot contain halogenated resin, nor can the pallet contain halogenated flame retardant. This is not the invention of Nagano et al. The dependent claims contain additional definition of the present invention and are even additionally patentable. It is submitted there can be no anticipation and this rejection of claims 37, 47, and 34-53 should be withdrawn.

CLAIM REJECTIONS – 35 USC 103

PARAGRAPH 15

Claim 31 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Oishi et al. in view of Endo et al.

Claim 31 is now cancelled and the subject matter (pallet) has been incorporated into independent claim 30. Applicant will respond to this rejection as if it is a rejection of Claim 30.

Paragraph 13, above, discusses the Oishi et al. reference in detail. It has been shown that Oichi et al. fails as a reference because there is no teaching or suggestion that a blend of a thermoplastic resin and a thermoset resin is useful to produce a plastic container or pallet. All blends disclosed in Oishi et al. are blends of thermoplastic materials.

Endo et al. relates to a multipart composition (reclaimed PET and polylactone resins, both of which are thermoplastics) useful as a plastic pallet. Certain halogenated epoxies are disclosed as useful flame retardants (col. 8, lines 17 ff). These epoxies are expressly excluded from the present invention claim 30, as amended. No halogenated resins or halogenated flame retardants can be present in the present invention independent claim 30. The Endo et al. composition cannot overcome the basic failure of Oichi et al. to teach or suggest the combination of nonhalogenated olefin and thermosetting resins of the present invention composition.

Oichi et al. fails to teach or suggest the present invention pallet requiring a combination of halogen-free thermoplastic and thermosetting resins with nonhalogenated flame retardant and Endo et al. cannot overcome this essential failure. There is no motivation in the references for providing the changes urged in the Office Action. Furthermore, it is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, so as to arrive at the claimed invention by using the claims as a guide*. It is submitted there can be no obviousness and this rejection should be withdrawn.

PARAGRAPH 16

Claim 33 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Oishi et al. in view of Perez et al. and further in view of Angell, Jr.

Claim 33 relates to the plastic container of claim 30 comprising structural foam comprising an integral skin and cellular core.

Applicant has shown the essential failure of the primary reference Oishi et al. to disclose the composition of the present invention – a combination of thermoplastic and thermoset resins

free of halogen and a nonhalogenated flame retardant, for use as a plastic pallet. No pallets are disclosed or suggested in Oishi et al.

Perez et al. relates to polymeric networks that can have a foam construction. The foam is not disclosed to be structural. No pallets is suggested. The Office Action alleges that "any foam would be considered to be 'structural'", a statement for which there is no basis in fact. Please see the Dictionary definition provided with Applicant's previous Response. As used in the art and confirmed by the Dictionary definition, a structural component is a weight-bearing part. One would not use the foam in "bubble-bath" or in a pillow as a weight-bearing structural member. Clearly, one could cite many examples of non-structural foams. Perez et al. disclosed only that his composition can be applied to a substrate (i.e., as a coating) (col. 3. lines 24-25). A coating does not suggest a structural component. In fact, a coating teaches away from being useful as a structural component. One would not consider a paint coating on a wall or bridge as a suitable material for bearing weight in those structures. There is no suggestion that the foam of Perez et al. could be useful as a structural foam. Absent such a suggestion there can be no obviousness.

Angell et al. relates to a method and apparatus for injection molding of polyethylene foam articles. No pallets are suggested. No combination of olefin and thermosetting resins is suggested.

No motivation is provided in the Office Action for the changes urged. It is improper to selectively choose elements or concepts from the various references, without considering these references as a whole, so as to arrive at the claimed invention by using the claims as a guide*. This combination of references fail to suggest a plastic pallet having a combination of polyolefin and thermosetting resins free of halogen with a nonhalogenated flame retardant comprising a structural foam. This combination of references fails to teach or suggest the present invention plastic pallet and should be withdrawn.

PARAGRAPH 17

Claim 33 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Perez et al. and further in view of Angell, Jr.

Claim 33 relates to the pallet of the invention comprising structural foam.

Nagano et al. is discussed in detail in Paragraph 14, above. It is to be appreciated that Nagano et al. requires the presence of halogenated epoxy to produce a useful pallet. Halogenated epoxy is expressly excluded in the present invention independent claim 30 from which claim 33 depends. No other thermosetting resin is disclosed in Nagano et al.

Perez et al. as noted above in Paragraph 16 does not teach or suggest a pallet or flame retardants in its composition, nor does is suggest structural foam. A coating does not suggest structural foam. As previously mentioned, a paint coating on a bridge or wall would not be suitable as a structural component of the bridge or wall. Absent such a suggestion, there can be no obviousness.

Angell, Jr., as noted in Paragraph 16 above, also does not suggest a weight bearing member for a pallet. No combination of polyolefin and thermosetting resins is suggested or disclosed. A bowling pin or container does not suggest a weight bearing member for a pallet.

No motivation can be found in the references to make the changes urged by the Office Action. Furthermore, it is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, so as to arrive at the claimed invention by using the claims as a guide*. It is submitted that this combination of three references fails to teach or suggest the pallet of claim 33 comprising a combination of halogen-free polyolefin and thermosetting resins, nonhalogenated flame retardant, as well as structural foam, and this rejection should be withdrawn.

PARAGRAPH 18

Claim 46 has been rejected under 35 U.S.C. 103(a) as unpatentable over Oishi et al. in view of Radcan.

Claim 46 relates to the pallet of the present invention further comprising at least one RFID tag.

Oishi et al. is discussed in detail in Paragraph 13, above. It has been shown that Oishi et al. fails as a reference for lack of teaching or suggestion to a plastic pallet comprising a combination of halogen-free thermoplastic and thermosetting resins.

Radcan relates to a container and inventory monitoring method and system for identifying inventory using RFID tags. There is no disclosure to use of a combination of thermoplastic and thermosetting resins for a pallet.

It is submitted that the combination of Oishi et al. and Radcan does not teach or suggest the present invention plastic pallet comprising a combination of halogen-free polyolefin and thermosetting resins. No motivation can be found in the references cited to make the changes urged by the Office Action. It is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, so as to arrive at the claimed invention by using the claims as a guide*. This rejection fails and should be withdrawn.

PARAGRAPH 19

Claim 46 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Radcan.

Claim 46 relates to the pallet of the present invention further comprising at least one RFID tag.

Nagano et al. is discussed above in detail in Paragraph 14, above. The reference requires the presence of halogenated epoxy to produce a satisfactory plastic pallet. Halogenated epoxy is expressly excluded from independent claim 30 of the present invention, the claim from which claim 46 depends. No other thermosetting resin is disclosed in Nagano et al.

Radcan relates to a container and inventory monitoring method and system for identifying inventory using RFID tags. There is no disclosure to use of a combination of thermoplastic and thermosetting resins for a pallet.

It is submitted that Nagano et al. and Radcan do not teach or suggest the present invention plastic pallet comprising a combination of halogen-free polyolefin and thermosetting resins. No motivation can be found in the references cited to make the changes urged by the Office Action. It is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, to arrive at the claimed invention by using the claims as a guide*. This rejection fails and should be withdrawn.

PARAGRAPH 20

Claim 48 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Oishi et al. in view of Juhanson.

Claim 48 relates to the plastic pallet of the present invention comprising a friction material on at least one surface thereof.

Oishi et al. has been discussed in detail above in Paragraph 14. It has been shown that Oishi et al does not teach or suggest the present invention composition which comprises a combination of halogen-free polyolefin and thermosetting resins. Oishi et al. does not disclose blends of more than one type of resin. Oishi et al. does not disclose plastic pallets.

Juhanson relates to a polyethylene non-skid case for carrying packaged soft drinks and the like.

Clearly, Juhanson does not overcome the failure of Oishi et al. to teach or suggest the present invention plastic pallet comprising halogen-free polyolefin and thermosetting resins. No motivation can be found in the references to make the changed urged by the Office Action. Furthermore, it is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, so as to arrive at the claimed invention by using the claims as a guide*. There can be no obviousness and this rejection should be withdrawn.

PARAGRAPH 21

Claim 48 has been rejeceted under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Dresen et al.

Claim 48 relates to the plastic pallet of the present invention (as described in detail above) comprising a friction material on at least one surface thereof.

Nagano et al. has been discussed in detail in Paragraph 13 above. It has been shown that Nagano et al. requires the presence of a halogenated epoxy in its composition for plastic pallet to produce a useful product. No other thermoset resin is disclosed. In contrast, the present invention independent claim 30 from which claim 48 depends is defined as free of halogenated resin as well as free of halogenated flame retardant. As discussed above, Nagano et al. actually

teaches away from a pallet composition free of halogen because its comparative example ,where no halogenated epoxy is present, produces an inferior product.

Dresen et al. relates to a thermoplastic pallet, preferably a polyethylene pallet, having friction material on its surface. There is no teaching or suggestion that a combination of polyolefin and thermosetting resins can be used to produce a plastic pallet.

It has been shown that Nagano et al. fails to teach or suggest the plastic pallet of the present invention that requires a combination of polyolelfin and thermosetting resins that are free of halogenation. Dresen et al. fails to overcome this lack of teaching or suggestion to the composition of the present invention pallet and there can be no obviousness. No motivation can be found in the references for making the changes urged in the Office Action.

Furthermore, it is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, to arrive at the claim invention by using the claims as guide*. It is submitted this rejection fails and should be withdrawn.

PARAGRAPH 22

Claims 55-59 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano et al. in view of Perez et al.

Claims 55-59 relate to the plastic pallet of the present invention (as discussed in detail above) further comprising:

55. at least one photoactivatable catalyst and a thermal curing agaent
56. a catalyst as specified in the claim
57. a thermal curing agent as specified in the claim
58. the plastic pallet wherein the composition is cured
59. the plastic pallet comprising a semi-interpenetrating polymer network (semi-IPN)

Nagano et al. has been discussed in detail above in Paragraph 13. The Nagano et al composition requires the presence of a halogenated epoxy as a fire proofing agent. Halogenated epoxy cannot be present in the present invention plastic pallet composition because independent claim 30 requires that it be free of halogenated resin and must contain only nonhalogenated flame

retardants. No other thermosetting resin is disclosed in Nagano et al. Clearly, the primary reference cannot have the composition of the present invention.

Perez et al. relates to semi-IPNs of epoxy and polyolefin resins, methods therefore, and uses thereof. It is disclosed in Perez et al. that the semi-IPN can be applied to a storage vessel. It can be used as a coating on a storage vessel. Coatings on a substrate generally are used for decorative or protective purposes. It is not expected that a coating will add structural support to an article. As noted above, a paint coating on a wall or bridge would not suggest to one skilled in the art that the paint would be useful as a structural member of the wall or bridge. Utility as a coating clearly would not serve as motivation for one skilled in the art to use the semi-IPN as a structural member for a pallet, just as paint on the surface of a bridge or a wall would not motivate one skilled in the art to use paint as a structural member for a bridge or a wall. Without motivation provided by teaching or suggestion in the art, there can be no obviousness. *Ex parte Chicago Rawhide Manufacturing Co.*, 226 U.S.P.Q. 438 (PTO Bd. App. 1984).

It is submitted no motivation can be found in the references to make the changes urged in the Office Action. Furthermore, it is well-accepted in patent law that it is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, to arrive at the claimed invention by using the claims as a guide*. It is submitted this rejection is improper and should be withdrawn.

PARAGRAPH 23

Claims 60 and 61 have been rejected as unpatentable over Nagano et al. in view of Ueeda et al. and further in view of Dyckman et al.

Claims 60 and 61 relate to the plastic pallet of the present invention and add further definition to the antimicrobial additive of claim 35 which is dependent on claim 30.

Nagano et al. relates to a plastic pallet requiring in its composition a halogenated epoxy in addition to a polyolefin. The halogenated epoxy is disclosed to provide fire proofing to the article. No other thermosetting resin is disclosed. In a comparative example without halogenated epoxy it is shown that the plastic pallet of Nagano et al. fails to produce a

satisfactory product. This serves as a teaching away from using the Nagano et al. teachings without the inclusion of halogenated epoxy.

The present invention has done just what Nagano et al. teaches against. It has produced a plastic pallet having as its composition a combination of halogen free polyolefin and thermosetting resins and halogen free flame retardant(s). This is a surprising result in view of the teachings of Nagano et al.

Ueeda et al. relates to a thermoplastic sheet that can be fashioned into a pallet. The pallet can contain antimicrobial additives. Clearly, Ueeda does not overcome the failure of Nagano et al. to teach the combination of halogen free polyolefin and thermosetting resins and halogen free flame retardants required in the present invention claims.

Dyckman et al. relates to an antimicrobial anti-fouling compound used in either a thermoplastic or a thermosetting resin. No combination of these two resins is taught or suggested and it does not overcome the failure of Nagano et al. and Ueeda et al. to teach a pallet comprising a combination of halogen free polyolefin and thermosetting resins.

None of the references here individually or combined teach or suggest the present invention and there can be no obviousness. No motivation can be found in the references for making the changed urged by the Office Action. It is improper to selectively choose elements or concepts from the various references, without considering the references as a whole, to arrive at the claimed invention by using the claims as a guide*. This rejection fails and should be withdrawn.

SUMMARY AND PERTINENT CASE LAW

Eleven references have been cited in various combinations against this application. Bits and pieces of those references are alleged to be capable of assembling into Applicant's invention. Using Applicant's invention as a blueprint, with hindsight, these bits and pieces are urged to be useful to reconstruct Applicant's invention. Patent law does not sanction such a hindsight reconstruction of an invention. The following case law is most relevant.

*The Board of Patent Appeals and Interferences, in a similar situation, made the following relevant arguments: Presuming arguendo that the references show the elements or

concepts urged, the Examiner presented no line of reasoning as to why the artisan reviewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the claimed invention. In the instant application, the Examiner has done little more than cite references to show that one or more elements or some combinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to a combination of elements. That is to say, the applicant does not claim that he has invented one or more new elements, rather, he has presented claims to a new combination of elements. To support the conclusion that the claimed combinations directed to obvious subject matter, either the references must explicity or impliedly suggest the claimed combination or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. The Board found nothing in the references that would expressly or impliedly teach or suggest the modifications urged by the Examiner. Additionally the Board found no line of reasoning in the answer as to why the artisan would have found the modifications urged by the Examiner to have been obvious. Based upon the record, the artisan would not have found it obvious to selectively pick and choose elements or concepts from the various references so as to arrive at the claimed invention without using the claims as a guide.

Ex parte Clapp, U.S.P.Q. 972 (B.P.A.I. 1985).

*The Federal Circuit, noting that using the claim in a patent application as a blueprint for rejections is not proper, has stated: To combine references (A) and (B) properly to reach the conclusion that the subject matter of a patent would have been obvious, case law requires that there must be some teaching, suggestion, or inference in either reference (A) or (B), or both, or knowledge generally available to one of ordinary skill in the relevant art, that would lead one skilled in the art to combine the relevant teachings of references (A) and (B). Consideration must be given to teachings in the references that would have led one skilled in the art away from the claimed invention. A claim cannot properly be used as a blueprint for abstracting individual teachings from references. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 227 U.S.P.Q. 657 (Fed. Cir. 1985).

*Many of the rejections in this Office Action appear to reflect the pernicious effect of hindsight reasoning. The Federal Circuit has stated: When prior art references require a selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself. Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

Hindsight reconstruction using bits and pieces of these eleven references only serves to indicate that if Applicant's invention were obvious, one or more of the many inventors involved in these references would have discovered it. Applicant submits his invention is neither anticipated or obvious in view of the rejections made using these eleven references.

It is submitted that all objections and rejection have been overcome Examination and reconsideration of the application as amended is respectfully requested. Allowance of claims 30, 32-37, 46-53 and 55-61 at an early date is solicited.

Respectfully submitted,

April 16, 2004
Date

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